(2006) 10 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

SAIYAD AKILANT APPELLANT

Vs

POST MASTER POST OFFICE BABUPETH CHANDRAPUR RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Citation : 2007 4 CPJ 132

Hon'ble Judges : M.N.Ahmed , S.G.Nagarale J.

Advocate : Usha R.Tanna

Judgement

1. -APPELLANT/complainant Miss Saiyad Akila has preferred this appeal against the order dated 10. 12. 1997 passed by District Consumer Disputes Redressal Forum, Chandrapur (for short Forum) in C. C. No. 33/1996 whereby her complaint regarding the receipt of deficit amount in insured envelope through the respondent Post Office, Chandrapur, came to be dismissed 1. Relevant facts are as under: the appellant/complainant was a student of Homeopathic College at Chandrapur. She was residing at Girls'' Hostel at Chandrapur. On 30. 6. 1995 her brother Mr. Saiyad Nabil Ahmed had sent Rs. 5,000 through Viddyanagar, Post Office, Mumbai under insured letter No. 785. The denominations of the Notes were also written by her brother on the said envelope. The said insured envelope was received by the appellant through respondent Post Office on 4. 7. 1995. When it was opened in presence of E. D. M. C. Mr. Vilas Shankar Nimje and Mrs. Vaishali Nimje in the Post Office itself, appellant found the amount of Rs. 1,200 as against the remitted amount of Rs. 5,000. The denominations of the Notes received by the appellant through the said envelope were 10 Notes of Rs. 100 i. e. Rs. 1,000 and 20 Notes of Rs. 10 i. e. Rs. 200, thus, totalling to Rs. 1,200. in the said envelope appellant found 10 blank Note-book papers. In fact, the brother of the appellant had sent 50 notes of Rs. 100 denomination, amounting to Rs. 5,000. Appellant brought this deficiency and mischief to the notice of Post Master Mr. Uike immediately. Later on at 4 p. m. on the same date, Mr. Vilas Nimje issued the receipt of Rs. 1,200 to the appellant. Thereafter appellant confirmed from her brother at Mumbai and reported the said incident to him. Her brother told her that he had sent Rs. 5,000 through the insured envelope. So the

appellant lodged the complaint in the Babupeth Police Station on 14. 7. 1995 regarding the misappropriation made by the respondent''s employee. Thus the appellant did not get the remaining amount of Rs. 3,800 from the respondent. She also issued a legal notice to the appellant on 9. 8. 1995. Non- compliance of which resulted into the filing of the complaint for recovery of deficit amount of Rs. 3,800 along with other ancillary relief.

2. THE above averments of the appellant were opposed by the respondent vide its written version before the Forum. It was contended by the respondent that the envelope was received in intact condition and it was handed over in the same condition to the appellant. The appellant''s brother had not given any declaration regarding the contents on the said envelope in Viddyanagar Post Office, Mumbai. The respondent averred that the complaint suffers from non-joinder of the necessary party. Inasmuch as the Viddyanagar Post Office, Mumbai is not joined as party. The learned Forum received the oral and documentary evidence of the parties vis-a-vis the above averments and came to the conclusion that for want of evidence the appellant failed to prove that Rs. 5,000 were sent to her in the said envelope. The Forum also found that there was no proper declaration regarding the amount in the said envelope given by her brother. Having come to these conclusions Forum found that there was no deficiency on the part of respondent /o. P. So it was pleased to dismiss the complaint by its order, which is challenged in this appeal.

Heard Advocate Mrs. U. R. Tanna for the respondent. Notices were sent to both the parties under Certificate of Posting. Respondent appeared in response to the said notice but none appeared for the appellant. So appellant is taken to have been served but remained absent. However, we have perused the record and the order of the Forum.

3. MRS. U. R. Tanna, learned Advocate on behalf of the respondent supported the finding of the Forum and prayed that it should be maintained in this appeal. She also contended that the complaint suffered from non-joinder of necessary party. She further contended that this appeal was dismissed earlier by this Commission and, therefore, there is no propriety to decide this appeal as it does not survive. We have perused the record and order of the Forum and found that perusal of the order of this Commission dated 28. 11. 2000 shows that the Complaint was initially dismissed for default by this commission. But it was restored at the request of the appellant/complainant by the said order. The restoration of the appeal is not challenged by the respondent. So the appeal has to be taken as restored on record. So we find no merit in the argument of Mrs. Tanna on this point

4. IT is not in dispute that the said envelope was insured by the Viddyanagar Post Office, Mumbai. It is also not in dispute that as per the provision of Section 33 of Indian Post Office Act, 1898 (for short Postal Act) the Post Office is bound to reimburse the loss caused to the sender in the transit of the insured article. Now the question that only remains to be solved in this appeal is whether there

was a supporting declaration regarding the contents of the envelope given by the brother of the appellant, who was sender of the said insured envelope. On this point, Mrs. Tanna relied on the rules framed by Post Office in the Post Office Guide Volume (5), Para 1 (for short said Guide). For our purpose the Rule 185 of the said guide is material, which reads as under: "declaration of value of gold coin or bullion or gold ornaments or articles of gold - In the case of articles containing gold coin or bullion or gold ornaments or articles of gold, Government currency notes or bank notes or any combination of these sender should declare on the article the value of the contents at the time of depatch. "

(Emphasis added) The bare reading of the above rule makes it abundantly clear that declaration can be written by the senders on the article itself Here in the instant case, the envelope was insured and the contents therein were clearly mentioned on the said envelope. The contents read as 50 Notes of Rs. 100 denomination. The Forum also found on the said insured envelope that there was writing to the effect that the said envelope contained 50 Notes of Rs. 100 denomination. This writing is a clear declaration given by the sender to the respondent Post Office within the meaning of Rule 185 of the said guide. So in view of this proof we find that the Forum erred in coming to the conclusion that there was no declaration given by the sender on the envelope. In fact, the Rule 185 cited supra, says that the declaration should be written on the article itself. When the envelope bore the writing, giving the clear information to the respondent about the contents of the envelope, we think there is sufficient compliance of the Rule 185.

5. SO, when the Rule 185 is read along with statutory liability under Section 33 of the Post Office Act, there remains no room for doubt that the sender of the envelope had made a sufficient compliance on his part.

6. IT is also not in dispute that the deficit amount was received by the appellant i. e. Rs. 1,300 only as against the remitted amount of Rs. 5,000. Respondent''s employee had also passed the receipt of having received Rs. 1,200 only by the appellant when the envelope was opened in their presence in the respondent''s Post Office at Chandrapur. So the fact that amount received was deficit than what was sent by the brother of the appellant. So it clearly amounts to deficiency in service for which the respondent Post Office is bound to reimburse the said amount to appellant. So, we find that the appellant has proved that her brother had sent Rs. 5,000 in an insured envelope through the respondent''s Post Office.

The appellant has also proved on record that she was to receive deficit amount of Rs. 3,800 so she is entitled to receive the same from the respondent. However, in view of the provision of Section 33 of the Indian Post Office Act, she is not entitled to interest on this amount.

7. AS regards to non-joinder of the necessary party, it must be stated that Postal Department is run by the Central Government and its branch offices are of one and the same department. Therefore, it is not necessary to join the Viddynagar

Post Office, Mumbai through which the insured envelope was sent. So we see no merit in the argument of Mrs. U. R. Tanna when she says complaint suffered from non-joinder of the necessary party. For the aforesaid reasons, we see much force in this appeal and it deserves to be allowed. Hence, the order: ORDER appeal is allowed. (i) Respondent to pay the amount of Rs. 3,800 to the appellant within one month from the date of receipt of this order. (ii) Parties to bear their own cost in this appeal. (iiii) Copies of this order be supplied to the parties.

Appeal allowed.